

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2082 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

TULSIDAR GIRDHARLAL

Versus

UNION OF INDIA

Appearance:

MR SURESH M SHAH for Petitioner
MR RM VIN for Respondent No. 1, 2

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: ____ /07/2000

C.A.V. JUDGEMENT

Original plaintiff of Regular Civil Suit No.104 of 1993 has preferred this Revision Application inter alia praying that the order dated 8th November 1995 passed below Exh. 30 by the Civil Judge, J.D., Bhavnagar, be quashed and set aside or be reversed and the application be allowed.

2. Brief facts to be considered for disposal of this

Revision Application are as under:

2.1 The petitioner is a timber merchant. Certain goods were despatched from Assam through Railway wagons. It is pointed out that the goods which were transported were small pieces of timber waste and accordingly, the amount was charged in the Railway Receipts for transporting, and the Railway Receipts were prepared as per Tariff No. 37. It is the case of the petitioner that according to the tariff, the rate was charged by the Railway authorities at Rs.94-70 per quintal and the freight charge was payable at the destination, namely: Bhavnagar. It is averred in the petition that at the time of delivery, the petitioner was told that the freight is to be re-calculated and delivery of the goods cannot be made on the basis of the amount stated in the Railway Receipts. At Annexures 'A' and 'B', the petitioner has annexed copies of Railway Receipts. In the Railway Receipts, for description, it is mentioned as "box wagon loaded with small pieces of timber wood as per Tariff rate for small pieces of timber". Considering the total weight per railway receipt, charge is calculated at Rs.25,498/- in each Railway Receipt, i.e. a total sum of Rs.50,996/- was payable as freight. The petitioner contended that at the destination, demand was made on the basis that the goods were wooden logs, and not small pieces of timber as declared. According to the Railway authorities, goods fall within the category of wooden logs and a false declaration of timber waste was made at Assam. In view of the demand raised by the Railway authorities, a suit was filed in the Court of Civil Judge, J.D. Bhavnagar being Regular Civil Suit No. 104 of 1993, and an application Exh.5 was also preferred for a direction not to auction the goods, and to deliver the goods to the petitioner by collecting the freight as per the Railway Receipt. The trial Court initially restrained the Railway from auctioning the goods, but the same was vacated after hearing the parties. The said order of the trial Court was challenged before the lower appellate Court by filing Misc. Civil Appeal No. 143 of 1993 which modified the order passed by the trial Court to the effect that the goods in question be handed over to the petitioner on furnishing Bank Guarantee in the Court. Being aggrieved by the said order, the petitioner herein approached this Court by filing Civil Revision Application No. 434 of 1994 which was heard by me and an order was passed on 21st January 1995. Paragraph 3 of the said order is reproduced below:

"3. I have heard the learned advocate at length. Learned advocate Mr. Shah submitted

that penalty and freight together, sought to be imposed by the respondents, i.e. the amount now claimed by the respondents, is higher than the value of the goods. Therefore, learned advocate Mr. Shah submitted that looking to the peculiar facts and circumstances, without going into the merits of the case, it would be just and proper to modify the order passed by the appellate Court and the plaintiff be permitted to furnish a solvent surety to the trial Court equivalent to the amount demanded by the respondents to the satisfaction of the trial Court and acceptable to the respondents and be also permitted to give an undertaking to the trial Court to the effect that the plaintiff shall make the payment as and when demanded by the Railways or if he fails in the suit."

2.2 Accordingly, the trial Court was moved by by the petitioner by submitting Exh.30 on 24.2.1995 and the petitioner gave surety by producing solvency certificate and undertaking. The said application was contested by the respondent and it submitted that the surety and undertaking should be for Rs.10,71,702/- as per Exh.33. According to the Railways, amount must be recovered from the plaintiff by way of penal freight on account of mis-declaration of the consignment and also other charges by way of wharfage. As per calculation made by the railways, penal freight was Rs.2,67,552/- and wharfage from 15.9.1992 to 5.3.1995 was Rs.8,04,180/-, totalling to Rs.10,71,702/-.It was also contended by the Railways that the wharfage incurs day to day till the party takes the delivery of the consignment. After hearing the parties, it appears that the trial Court accepted the contention raised by the Railways and by order dated 8.11.1995, directed the petitioner to give surety and undertaking for a sum of Rs.10,71,702/- and further held that only after furnishing solvent surety further orders will be passed; Hence the present Revision.

3. Mr. Shah, learned advocate appearing for the petitioner submitted that this matter was earlier placed before another learned Single Judge who was requested to consider the words "amount demanded" appearing in the order dated 21st January 1995 in C.R.A. No. 434 of 1994, and the learned Single Judge was of the opinion that as interpretation of the words in the order passed by me in the aforesaid matter is required, directed this matter be placed before Honourable Chief Justice for placing it before me.

4. Mr. Shah further submitted that when the earlier Revision Application No. 434/94 was filed, without going into merits of the case, at the instance of the petitioner, the Court modified the order passed by the appellate Court and the plaintiff was permitted to furnish a solvent surety before the trial Court equivalent to the amount demanded by the respondents, to the satisfaction of the trial Court and acceptable to the respondents. It was further directed that the plaintiff be also be directed to give an undertaking to the trial Court to the effect that the plaintiff shall make the payment as and when demanded by the Railways or if he fails in the suit. Therefore, Mr. Shah submitted that at the initial stage when the suit was filed, the demand which could have been made by the Railways could be only as per the Railway Receipt. As against this, it was submitted that the "amount demanded" as mentioned in the order if understood in the sense in which Mr. Shah states, then there was no question for him to file the suit because even otherwise the Railway was entitled to receive that amount and would have delivered the goods, but that amount was not acceptable and the amount demanded was more, and, therefore, there is no question of collecting the amount as per the Railway Receipt. As a matter of fact, in paragraph 2 of the order dated 21.1.1995 it is clearly mentioned that the respondent demanded 'higher freight charges and penalty'. Therefore, that was the 'amount demanded' by the Railway.

5. Mr. Vin submitted that the goods are lying with the Railways and if the consignee is not taking delivery of the goods, then as per the prevalent rules, the consignee has to pay wharfage. Mr. Shah submitted that the petitioner is not willing to pay any wharfage as there is no fault of the petitioner. He further submitted that if the amounts as mentioned in the Railway Receipts were accepted, there would have been no grievance for the petitioner to file the suit but as higher amount was demanded, suit was filed.

6. If the freight is to be calculated infact at the rate of Rs.300/- per quintal and not at the rate which is mentioned in the Railway Receipts, then certainly the Railways can claim the amount and can also claim penalty as per rules. The question before the Court was as to what rate is to be charged. There was no dispute with regard to wharfage. The Railway is entitled to claim wharfage if delivery of the consignment is not taken by the consignee within the stipulated period. All these questions are required to be decided by the trial Court and not by this Court. It is alleged by the Railways

that at the time of arrival of the goods at the delivery destination, the material was found to be of a different description, attracting a different tariff than the description given by the consignor at the place of booking. It is in view of this the Railways demanded higher freight charges and penalty. Therefore, that amount was required to be paid by the petitioner at the relevant time, as contended by Mr. Vin. As the petitioner refused to take delivery of the goods, the goods were required to be kept by the Railways. Therefore, certainly, the Railway has a claim towards detention charges of the goods, and it cannot be said by this Court at this juncture that the claim of the Railway is improper. Mr. Vin submitted that the Railways, in their application, vide Exh. 33, have pointed out the freight calculated at the penal rate and wharfage, i.e. detention charges from 15.9.1992 to 5.3.1995. Thus, it is clear that the amount calculated as per the penal rate for both the Railway Receipts comes to Rs.2,67,522/- and the wharfage from 15.9.92 to 5.3.95 comes to Rs.8,04,180/-. Therefore, in any case, Rs.2,67,522/- as penal freight was demanded by the Railways on the date on which the consignee approached the Railways for delivery of the consignment. So, that amount is required to be paid by the petitioner in any case, as contended by the Railways. As stated above, the Railway is also entitled to claim wharfage.

7. Mr. Shah, learned counsel submitted that he is not inviting any order for auction of the goods in question and he requested the Court that the Court should not travel beyond its jurisdiction. As against this, Mr. Vin submitted that so far as the Railway is concerned, it is a public utility and provides services to the people at large in the country. He further submitted that such litigants before the Court, may be in connivance of the its staff, may have mis-declared the goods but it does not mean that the Railway is not entitled to recover the amount which otherwise the Railway is entitled. Mr. Vin submitted that the goods arrived at Bhavnagar on or about 15.9.1992 and more than eight years have passed and the goods are still lying. Looking to the size of the wood, he submitted that the property must be auctioned so as to enable the Railway to store the consignment of others.

8. Having considered the matter in details, the words "amount demanded" appearing in my order dated 21.1.1995 is not the amount as mentioned in the Railway Receipts. The Railways at the time of delivery, demanded higher freight charges and penalty and therefore, the amount demanded could mean only the higher freight

charges and penalty demanded by the Railways on that day. Ofcourse, over and above this, the Railways has not lost its right to demand wharfage as the goods are in its custody. If the delivery would have been taken on payment of charges as claimed, there was no question of detention charges. If there was any doubt in the mind of the petitioner about interpretation of the word 'amount demanded', it could have immediately moved the Court for clarification.

9. Mr. Shah, learned advocate submitted that if the Court is inclined to pass an order of auction, then there should be certain terms such as drawing of a panchnama in the presence of the petitioner, advertisement in local newspapers, inspection of the goods etc. It goes without saying that if the Railway wants to auction the goods, then it will have to follow the normal procedure of public advertisements, inspection etc., and if the petitioner or any bidder wants to inspect the goods, such interested parties be permitted to inspect the goods on payment of requisite fees/charges if so provided in the relevant Act/Rules. So far as panchnama is concerned, it is directed that the Railways shall prepare a panchnama in detail. It shall record the size of the logs so as to avoid the controversy whether goods consigned were small pieces of wood or timber logs.

10. Looking to the peculiar facts and circumstances of this case, it is directed that if within fifteen days from today the petitioner pays penal freight of Rs.2,67,522/- AND furnishes a solvent surety to the satisfaction of the trial Court for Rs.8,04,180/- AND files a solemn undertaking before the trial Court to pay additional wharfage from 6.3.1995 to the date of taking delivery of the goods at the rates applicable, the Railway shall deliver the goods to the petitioner. However, if the petitioner do not comply with the aforesaid directions within fifteen days from today, the Railways will be at liberty to auction the goods after following the requisite formalities, and shall retain the amount with it. Out of the proceeds, after deducting the cost of auction and the amount as per the Railway Receipts, (Rs.50,996/-), excess amount, if any, shall be invested in a Fixed Deposit Account initially for a period of one years, which shall be renewed time to time till disposal of the suit. It goes without saying that the aforesaid directions in this order is subject to the outcome of the suit and the trial Court shall decide the suit without being influenced by any observations made in this order.

11. Rule made absolute accordingly. No order as to costs.

csm./ (B.C. PATEL, J.)